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July 21, 2004

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

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JUL 21 2004

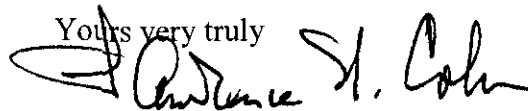
Federal Communications Commission
Office of Secretary

Dear Ms. Dortch

On behalf of Tichenor License Corporation, licensee of Station KOB(FM), Winnie, Texas and Station KLTO, Crystal Beach, Texas, there are submitted an original and five (5) copies of an Opposition of Tichenor License Corporation in MB Docket No. 02-212 (Vinton, Louisiana, Crystal Beach, Lumberton, and Winnie, Texas).

Please direct any communications regarding the enclosure to the undersigned counsel.

Yours very truly



Lawrence N. Cohn

Enclosures

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BEFORE THE
Federal Communications Commission

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In the Matter of

JUL 21 2004

Amendment of Section 73.202(b))	Federal Communications Commission
FM Table of Allotments)	MB Docket No. 02-212
FM Broadcast Stations)	RM-10516
(Vinton, Louisiana, Crystal Beach,)	RM-10618
Lumberton, and Winnie, Texas))	

To: John A. Karousos
Assistant Chief, Audio Division
Media Bureau

OPPOSITION OF TICHENOR LICENSE CORPORATION

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July 21, 2004

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Summary

The Media Bureau Report and Order which Crawford challenges concluded that TLC's counterproposal was superior to Crawford's proposal under well-established Commission precedents, namely FM Revision¹ and Tuck². Although Crawford does not contest that TLC's proposal is superior to his proposal under these Commission precedent, he contends that the Media Bureau should reverse the decision in the Report and Order because (1) TLC's proposal was submitted in bad faith and therefore the standards in FM Revision should not be applied, and (2) the Commission's standards for determining when a proposal to serve a small community which is near a larger community should be credited as a "first local service" under Tuck are so speculative as to be "arbitrary and capricious" under the APA.

Crawford's Petition should be dismissed for two reasons: (1) his argument about the alleged bona fides of TLC's proposal was considered and rejected by the Media Bureau in the Report and Order, and (2) the Media Bureau does not have the authority to ignore or reject established Commission precedent (e.g., FM Revision and Tuck).

If Crawford's Petition is not dismissed, it should be rejected on the merits because it is contrary to established Commission precedent (i.e., FM Revision and Tuck). Furthermore, Crawford's request that the Media Bureau consider characteristics (i.e., the good faith) of TLC, a petitioner, in this FM rulemaking proceeding would make a fundamental change in the Commission approach in making allotment decisions under Section 307(b) of the Communications Act. While the Commission's case precedent and other decisions in FM (and TV) rule making proceedings have always focused squarely and exclusively on the attributes of

¹ Revision of FM Assignment Policies and Procedures, 90 FCC.2d 88 (1982).

² Faye and Richard Tuck, 3 F.C.C. Red. 5374 (1998).

the communities involved in each proceeding, Crawford's approach would expand the focus to include an assessment of the character, attributes and intentions of the petitioner. In the unlikely event the Commission (not the Media Bureau) might want to consider such a fundamental change in the approach to FM (and presumably TV) allotment proceedings, it should do so in the context of a proceeding specifically addressed to that issue, and not in the context of the instant community-specific FM rulemaking proceeding.

BEFORE THE

Federal Communications Commission

In the Matter of

Amendment of Section 73.202(b))	
FM Table of Allotments,)	MB Docket No. 02-212
FM Broadcast Stations.)	RM-10516
(Vinton, Louisiana, Crystal Beach,)	RM-10618
Lumberton, and Winnie, Texas))	

To: John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Opposition of Tichenor License Corporation

Tichenor License Corporation ("TLC"), licensee of Stations KLTO(FM), Crystal Beach, Texas, and KOB(FM), Winnie, Texas, hereby submits its Opposition to the Petition of Charles Crawford for Reconsideration ("Petition") submitted on June 3, 2004.¹ In support of the conclusions reached in Report and Order DA 04-1200 (Audio Division, Media Bureau, May 4, 2004) ("Report and Order")², and in opposition to the Petition, TLC states the following.

I. Crawford's Petition Should be Dismissed.

Crawford's Petition consists of three parts. In Section I (pages 2-6), Crawford acknowledges that TLC's counterproposal regarding allotments at Winnie, Lumberton, and

¹ The filing of Crawford's Petition appeared in the Federal Register on July 6, 2004. Hence, this Opposition is filed in a timely manner. See Sections 1.429(e) and (f) of the Commission's rules.

² The Report and Order granted TLC's counterproposal in this proceeding which sought (1) the reallocation of Station KOB(FM), Channel 26.4C from Winnie, Texas to Lumberton, Texas, and the modification of KOB(FM)'s license accordingly, and (2) the substitution of Channel 28.7C2 for Station KLTO's current Channel 28.7A, and the reallocation of Channel 28.7C2 from Crystal Beach to Winnie, Texas. The Report and Order denied Crawford's conflicting proposal to allot Channel 28.7A to Vinton, Louisiana.

Crystal Beach, Texas, is superior to his proposal to add an FM allotment at Vinton, Louisiana, under the standards adopted by the Commission in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982) (“FM Revision”). However, Crawford contends that the Media Bureau should not apply these standards in this case because, in his view, TLC’s counterproposal was not advanced in good faith and is an effort to manipulate the FM allotment system. In Section II (pages 6-10) Crawford contends that the Media Bureau should not use the standards adopted by the Commission in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) (“Tuck”), to assess TLC’s claim that its proposal to serve Lumberton (which is in the Houston/Beaumont area) is entitled to credit as a “first local service” under the third criteria of FM Revision. According to Crawford, the standards established by the Commission are so speculative as to be “arbitrary and capricious” under the Administrative Procedure Act. In Section III (pages 11-13), Crawford complains, in a general way, that rural areas are deserving of additional radio service and are being unfairly denied the radio service to which they are justly entitled by the Commission’s allotment procedures and policies.

Crawford’s Petition should be dismissed. First of all, the argument in Section I regarding the bona fides of TLC’s proposal is precisely the same argument which Crawford made at length in his Reply Comments in this proceeding, filed October 15, 2002. See pages 2-5 (e.g., “Simply stated, the [KOBT] Channel 264C move from Winnie to Lumberton is an arbitrary and artificial device...to manipulate the FCC procedures...”, at pages 3-4). The Media Bureau considered and rejected this contention in the Report and Order (Paragraphs 3-4), applied the standards set forth in FM Revision (Paragraph 5), and concluded that TLC’s counterproposal was superior to Crawford’s proposal. As the argument presented by Crawford in Section I of his Petition has

previously been presented to, considered, and rejected by the Media Bureau, it is not the proper subject of a petition for reconsideration. See, 47 C.F.R. Section 1.429.

Second, Crawford's arguments in Sections I and II ask the Media Bureau to ignore or reject the binding Commission precedent set forth in FM Revision and Tuck. Notwithstanding Crawford's fervent plea to the contrary, the Media Bureau is obligated to follow the decisions and directives of the Commission. Crawford's request that the Media Bureau ignore or reject the Commission precedents in FM Revision and Tuck, whether expressed directly or in more general terms (as in Section III), do not suffice to constitute the basis of a petition for reconsideration.

As none of the arguments set forth in Sections I, II, or III is the proper subject of a petition for reconsideration, the Media Bureau should dismiss Crawford's Petition without consideration on the merits.

II. If Crawford's Petition Is Not Dismissed on Procedural Grounds, It Should Be Denied on the Merits.

A. The Media Bureau Correctly Assessed the Merits of Crawford's Proposal and TLC's Counterproposal on the Basis of Well-recognized Commission Precedent.

In Paragraph 5 of the Report and Order, the Media Bureau assessed the relative merits of Crawford's proposal and TLC's counterproposal on the basis of the standards articulated in FM Revision—namely, (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. The Media Bureau determined that under these standards, TLC's counterproposal (which would bring a first local service to Lumberton, population 8,731) was superior to Crawford's proposal (which would bring a first local service to Vinton, population 3,338). Id. The Media Bureau's assessment of the TLC and Crawford proposals is straightforward and, based on the standards in FM Revision, the results reached in the Report and Order clearly follow from the undisputed facts. Nowhere in Section I or any

other part of the Petition does Crawford challenge the Media Bureau's assessment based on FM Revision, and hence he implicitly acknowledges the correctness of Media Bureau's conclusion that TLC's counterproposal is superior to his proposal under established Commission standards. Nevertheless, Crawford contends that his proposal should be approved because, he asserts, TLC has unfairly manipulated the FM allotment system. In addition to the points made previously above--namely, that Crawford made this argument previously and the Media Bureau rejected it in the Report and Order, and that Crawford is essentially asking the Media Bureau to ignore the standards set forth by the Commission in FM Revisions and make the decision in this case based on other grounds (i.e., an assessment of TLC's good faith)--Crawford is simply wrong on the merits.

TLC did nothing improper and did not unfairly "manipulate" the FM allotment system. TLC's proposals to change the community of license of Station KOBT from Winnie to Lumberton and to change the community of license of Station KLTO from Crystal Beach to Winnie were, indeed, constructed with the knowledge that the population of Lumberton was larger than the population of Vinton, and with the expectation that TLC's proposal would be considered superior to Crawford's proposal for Vinton. But no matter how many times nor how vociferously Crawford protests that TLC's decision to select a community of license for Station KOBT (i.e., Lumberton) which would give its proposal comparative superiority over Crawford's proposal for Vinton is "unsavory," "illegitimate," a "shell game," submitted in bad faith, etc., etc. (see Petition, pages 2-6), it was none of these things. Why, pray tell, should TLC be penalized for presenting a proposal which it believed was superior to Crawford's proposal? Should TLC be expected to have made a proposal which it believed was inferior to Crawford's proposal, when a superior proposal was available? That would have been absurd, and TLC

should be commended, not criticized (much less castigated), for designing a counterproposal which fit its needs as the operator of Station KLTO and Station KOBT, and which it believed to be, and which the Media Bureau ultimately determined was, in fact, clearly superior to Crawford's proposal in terms of benefit to the public interest.

B. Crawford's Petition Should Be Rejected Because It Is Based on Fundamentally Different Considerations than Those Contemplated under Commission Precedent in FM Allotment Decisions under Section 307(b) of the Communications Act.

The Petition, like many of Crawford's other filings in FM rulemaking proceedings (more than a few of which involve TLC and its affiliates) is written in a distinctive and delightful style. The Petition is couched in casual and folksy language, is written with a distinctly populist tone³, and includes citations to "legal authorities" which are obviously included for no purpose other than to garner a chuckle from the reader.⁴ However, no one should be lulled to sleep by the Petition's style. As will be explained below, the Petition is a legal blockbuster, which places far more at stake in this FM allotment proceeding than the question of which of four small communities in Texas and Louisiana receive FM allotments. The Petition is nothing less than a full-fledged challenge to the fundamental theoretical underpinning of the FCC's approach to allocation decisions under Section 307(b) of the Communications Act. For this reason if none other, TLC frankly has little doubt that the Media Bureau will dismiss (see Section I, above) or reject Crawford's position out of hand. TLC offers these remarks in Section II B only to be sure

³ For example, see Paragraph 26, wherein the Commission is advised of Mr. Crawford's belief that "there is a future in rural radio and that it is important to act now to counterbalance the continued erosion of the available spectrum."

⁴ And here, counsel certainly succeeds. See, for example, Paragraph 15, wherein counsel, in his contemplation of the Commission's Tuck decision, comments that he is "reminded" of the of the discussion of the word "appertaining" as it appeared in a pre-World War II memorandum emanating from the US State Department, apparently in the context of a situation involving "Navassa Island in the Caribbean near Cuba shortly prior to the Spanish-American War." In providing this authority to the Commission and the parties, one can not help but admire the scope of counsel's knowledge. Further, counsel is to be commended for having concern that the cited authority might not be readily accessible in the reader's library, and therefore providing the referred to pages as Exhibit 2 to the Petition, thereby allowing the reader to verify the cited authority. Of course, all this is done to suggest (with tongue firmly in cheek), that this passage has some relevance to the instant proceeding, which of course it does not.

that the Media Bureau does not overlook the very substantial long-term implications of the arguments advanced in Section I of Crawford's Petition.

While the Media Bureau, following precedent, assessed TLC's proposal based on an overall assessment of the communities involved in this proceeding (i.e., Crystal Beach, Winnie, Lumberton), as commanded under FM Revision, Crawford's criticism of TLC's counterproposal is based on a seriatim examination of the two aspects of TCL's proposal—namely, the proposal to modify the license of Station KLTO from Channel 287A at Crystal Beach to Channel 287C2 at Winnie (Petition, Paragraph 10), followed by an assessment of the of the proposal to modify the license of Station KOBT on Channel 264C from Winnie to Lumberton, which Crawford condemns as “unsavory and illegitimate” (Petition, Paragraph 11). However, Crawford does not provide any precedent for this seriatim approach, never explains why he used this approach, or why he considered the proposal for KLTO proposal before the proposal for KOBT.⁵ However, the answer is obvious. As Crawford's Vinton proposal plainly inferior to TLC's counterproposal taken as a unit under the standards adopt by the Commission in FM Revision, Crawford dissects TLC's proposal into its constituent elements, hoping to “change the subject,” and convince the Commission to base its decision based on speculation about TLC's intentions and bona fides with respect to one aspect (the Winnie/Lumberton element) of the proposal.

Crawford's attack on TLC and its motives and good faith in this proceeding (Section I of the Petition), in couched in David and Goliath terms. Crawford refers to TLC (page 1) as “a giant broadcaster...in the Houston-Beaumont radio markets,” and then irrelevantly reminds the Commission that TLC is the licensee of not one class C FM station in the Houston/Beaumont

⁵ If Crawford had initially considered the proposal involving Station KOBT (rather than the one involving KLTO), the result would not have supported his thesis. TLC could not have been criticized for desiring to change KOBT's community of license from the smaller community of Winnie to the larger community of Lumberton, and it could not have been criticized for proposing to use its Station KLTO as a “back-fill” for Winnie's loss of its only station.

market (i.e., KOBT and KQBU-FM), and exclaims that the two stations (one of which—KQBU-FM—has nothing at all to do with this proceeding), have “enormous” (emphasis in the original) coverage areas (page 3), and supplies the coverage maps for both stations (Exhibit 1). By contrast, and in a blatant play for sympathy, Crawford describes himself as a mere “radio advertising executive by trade with offices in Dallas,” and explains that, apparently with nothing other than goodness as his motivation, he has “filed a substantial number of FM allotment petitions, all for small communities in or near rural areas.” Id., page 12. Crawford’s effort to shift the focus of the proceeding away from the subject which is always the key focus of FM allocation decisions—i.e., an evaluation of the characteristics of the communities involved in the competing proposals and to focus on the attributes of the contesting petitioners (with Crawford taking the role of David, and TLC assigned the role of Goliath) is the truly remarkable aspect of the Petition.

It is not hard to figure out why Crawford takes this extraordinary approach. As Crawford knows full well that he can not succeed based on the well-established standards in FM Revision, he is reduced to asking the Media Bureau to speculate that if TLC’s counterproposal is approved, TLC will not implement it in good faith. In taking this approach, Crawford is asking the Media Bureau to completely reject the basic theoretical underpinning of the system by which the FCC has, since the adoption of Section 307(b) of the Act, made allotment decisions. Section 307(b) of the Act directs the Commission to make allotment decisions “among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” (emphasis supplied). In implementing Section 307(b), and in making hundreds of decisions regarding the creation and later modification of the FM Table of Allotments (47 C.F.R. Section 73.202(b)), the Commission has uniformly focused exclusively on the characteristics of

the communities involved in the allotment proposals under consideration and has not considered the nature (e.g., the character, intrinsic qualifications, or motivations) of the petitioner who advanced a specific FM allotment proposal.

It is again worthwhile to contrast the Commission's long-standing approach in FM allocation decisions under Section 307 of the Act and FM Revision, with the approach the Commission formerly used, for decades, in choosing between mutually-exclusive applicants for constructions permits for new broadcast stations to serve the same community.⁶ In these proceedings, held under the standards articulated in the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 5 RR 2d 1901 (1965) ("Policy Statement"), the Commission held trial-type hearings and allowed parties to produce evidence which examined, in great detail, the differences in the qualifications of the principals of the competing applicants. Under the Policy Statement, consideration was given to such factors as the extent to which each applicant's "controlling" principals proposed to work at the applied for station on a full-time basis ("integration of station ownership into management"); the extent to which the principals of the applicant already held ownership interests in the mass media ("diversification of the media") and, with respect to the "integrated" principals, such factors as the extent to which the principals had broadcast experience, had lived in the local community of the proposed station, had been active in local civic and community groups, etc. At various times (depending on the status of the then prevailing law on the subject), additional enhancement credit was given if the "integrated" principals were minorities and/or women. Also, the backgrounds of the applicants were carefully examined to determine whether any of the principals had been convicted of serious

⁶ In cases where different communities of license were proposed by applicants, the Commission initially determined whether one of the communities was entitled to preference under Section 307(b). It made assessments of the applicants only if more than one applicant proposed to serve the community which was preferred under Section 307(b).

violations of FCC law or other legal requirements which might result in the assessment of either a “comparative” demerit or outright disqualification. In these cases, the qualifications of each applicant and each of its principals were carefully scrutinized by adversary counsel, and the assessments of these matters were often determinative of the outcome of the proceedings.

Since the Commission gave “integration” credit only with respect to applicants’ “active” (as opposed to “passive”) principals, applicants were carefully structured to maximize their comparative positions by the use of non-voting stock and limited partnership arrangements, and by assuring that those of the applicant’s principals with voting stock and general partnership interests were “active” in the applicant, while non-voting stock and limited partnership interests were saved for principals who were asserted to play only a “passive” role in the applicant’s affairs. In these comparative broadcast hearings, the most searching and detailed investigation was often made of the bona fides of each applicant’s purported ownership structure, with each applicant’s adversaries attempting to diminish or eviscerate all aspects of each adversary’s integration proposal, both by attempting to negate each integration proposal and claim for integration “enhancement” credits, but most importantly by demonstrating that an applicant’s purported two-tier structure (i.e., “active” and “passive” principals) was a “sham”, and that its purported “limited partners” and “non-voting stockholders”, who typically did not propose to work at the station were, in fact, deeply involved in or even “controlled” the applicant, thereby greatly diminishing the extent to which the applicant was entitled to “integration” credit. Between 1965 and 1993, the Commission resolved a large number of comparative broadcast cases based on the standards articulated in the Policy Statement. However, in 1993, the Commission’s policy of evaluating competing applicants under the “integration” principles articulated in the Policy Statement was found to be “arbitrary and capricious” in the landmark

case of Bechtel v. FCC, 10 F.3d 875 (D.C. Cir., 1993), and comparative broadcast hearings were thereafter discontinued by the Commission.⁷

From the foregoing, it will be seen that there has always been a clear and fundamental difference between the Commission's approaches in (1) comparative hearing cases, where, for almost 30 years, the background, characteristics, and the bona fides of the proposed "integration" commitment of the principals of the applicants, and the bona fides of the applicants' purported ownership structure were examined in the closest detail; and (2) FM (and TV) allotment cases, where the characteristics of the petitioners and the bona fides of their commitments to serve their proposed communities of licenses have never been questioned, and where, following the mandate of Section 307(b) of the Act, the Commission has always focused exclusively on the characteristics of the communities at issue.⁸ Allotment decisions are based on the characteristics of the communities based on the statutory command of Section 307(b), and in recognition of the quasi-permanent nature of the large majority of allotments, and in recognition of the fact that the station which will operate on any new allotment will change hands with the passage of time, as the station is assigned/transferred from one entity to another, thereby negating the relevance, in the context of a Commission rulemaking proceeding, of the attributes of the allotment petitioner.

The approach which Crawford is asking the Media Bureau to take would obliterate this distinction. Thus, it is no exaggeration to assert that Crawford's insistence that the Media Bureau should reject TLC's proposal because of Crawford's concerns about TLC's intentions and bona fides, and notwithstanding the unchallenged superiority of TLC's Crystal Beach,

⁷ TLC can not refrain from mentioning, in passing, the supreme irony of distinguished adversary counsel's attempt to interject into this FM rulemaking proceeding vestiges of the comparative hearings under the Policy Statement, which focused on the attributes and bona fides of competing applicants, but which was abandoned by the Commission subsequent to the landmark decision in Bechtel.

⁸ A concrete example will make this difference clear. In a comparative hearing case, an applicant which included a principal who had committed a serious crime might be disqualified from consideration entirely. However, such matters would not be considered and would be completely irrelevant in deciding whether to approve or deny the same applicant's FM rulemaking petition.

Winnie, Lumberton proposal versus Crawford's Vinton proposal based on established standards (i.e., FM Revision and Tuck) which focus on the characteristics of the communities at issue, is a direct and substantive challenge to the basic theoretical underpinnings of the current FM allotment system.

Apart from the obvious doubts about the wisdom of such a major change in focus (or its legal validity under the requirements of Section 307(b)), it is obviously far beyond the authority of the Media Bureau to make such a fundamental change in the way in which FM allotments have been made in countless proceedings over many years. Finally, and most importantly, the standards which the Commission adopted in FM Revision to guide decisions in FM allotment proceedings were adopted in a general rule making proceeding (BC Docket No. 80-130) which was specifically devoted to the standards upon which FM allotments were to be made. Any reconsideration of these standards should be undertaken in the context of another general FM rule making proceeding, and not in the context of the instant FM rule making proceeding, which is focused exclusively and narrowly on the FM allotments in four small communities in Louisiana and Texas.

C. The Media Bureau Correctly Used the Standards Set Forth in the Commission's Tuck Decision in Deciding that TLC's Proposal for Lumberton Deserved Credit for Providing a "First Local Service."

Although the Media Bureau noted that TLC has proposed no change in transmitter site for Station KOBT and there would be no move of the station from a rural to urban area, it nevertheless concluded (see Paragraph 6) that TLC had demonstrated that Lumberton was an independent community under the standards established by the Commission in Tuck, and that TLC was therefore deserving of credit under the third criteria of FM Revisions.⁹ Crawford does

⁹ It is less than clear from the wording of Paragraph 6 whether the staff's comments about the applicability of the Tuck precedent and its evaluation of TLC's showing to meet the Tuck standard was integral to the decision or

not contest this conclusion, or even comment on the showing made by TLC in its counterproposal. Instead, in Section II of his Petition, Crawford contends that the standards adopted by the Commission in Tuck to determine whether a proposed community of license is “independent” of a larger nearby community consist of “wildly speculative” considerations (Petition, page 7) which are so “nebulous and subjective” as to be “arbitrary and capricious” under the APA. Petition, page 2. Further, according to Crawford, the criteria set forth by the Commission in Tuck fail to take into account what Crawford asserts is the most “critical” factor—namely, “a determination of the reasonable likelihood that a broadcast station with a signal serving the central city or metropolitan area will in truth serve as a meaningful local outlet for a designated licensed community.” (Petition, page 8).

There are two responses to Crawford. First, as mentioned previously, the Media Bureau has no authority to reject or to refuse to apply the standards which the Commission itself established in the Tuck case.¹⁰ For this reason, the Section II of Crawford’s Petition is of no avail. In addition, Crawford’s argument is absurd. The fact is that the eight elements of the Tuck test (see footnote 10) are in fact really quite specific and detailed (many inquire into matters which are capable of very objective determinations—for example, “whether the specified community has its own local government and elected officials”), and are clearly and reasonably designed to provide the public with as much guidance as possible as to how decisions as to

whether it is mere dicta. If the staff’s decision is not based on the applicability of the Tuck standard, Section II of Crawford’s Petition is moot.

¹⁰ The factors are: (1) the extent to which community residents work in the larger metropolitan area; (2) whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

community independence for purposes of “first local service” determinations will be reached. The requirement that the Commission must weigh showings made on the various factors, and that a petitioner may make a successful showing on some but not all of the factors, hardly makes the required overall assessment of various factors “arbitrary and capricious.”

Moreover, and this makes Crawford’s argument ironic in the extreme, what Crawford asserts is the critical (and missing) consideration—namely, a determination at the rule making stage whether there is a “reasonable likelihood” that adoption of the petitioner’s proposal would result in a “meaningful local outlet” for the specified community is not only completely subjective, it is obviously impossible to examine or test in the contest of the Commission’s FM allotment procedures as currently structured. Substantive consideration of such matters would presumably require an examination of each petitioner’s “proposed programming” to served the designated community of license and the bona fides of its intentions to implement the programming. Apparently, Crawford is suggesting sort of evidentiary hearing at which petitioners and their programming proposals would be subject to cross-examination by opposing counsel. TLC seriously doubts whether the Commission has much interest in changing its FM allotment proceedings to include such hearings.

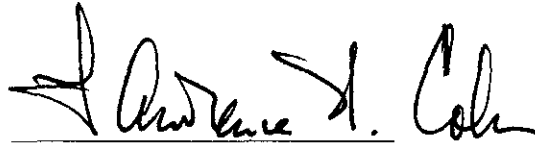
Conclusion

For the reasons set forth in Section I above, the Media Bureau should dismiss Crawford’s Petition; alternatively, if the Media Bureau does not dismiss Crawford’s Petition, for the reasons set forth in Section II above, it should deny Crawford’s Petition. In either event, the Media

Bureau should affirm the changes in the FM Table of Allotments as set forth in Paragraphs 7 and 8 of the Report and Order in this proceeding.

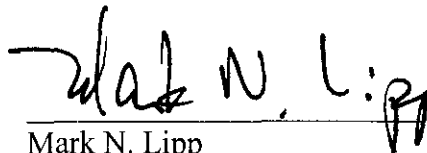
Respectfully submitted

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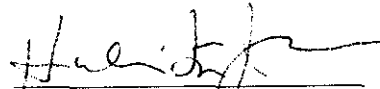
Date: July 21, 2004

Certificate of Service

I, Hannah Faye Jackson, have caused a copy of the foregoing OPPOSITION OF
TICHENOR LICENSE CORPORATION to be sent by United States mail, first class postage
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